

**DEPARTMENT OF INSURANCE****Legal Division, Policy Approval Bureau**

45 Fremont Street, 24th Floor

San Francisco, CA 94105

TEL: 415-538-4144

FAX: 415-904-5729

[www.insurance.ca.gov](http://www.insurance.ca.gov)**INVITATION TO PRENOTICE PUBLIC DISCUSSIONS**

**TO:** Certain Interested and Affected Parties

**FROM:** Nancy N. Hom

**DATE:** October 10, 2006

**RE:** Prenotice Public Discussions on Proposed Regulations

Pursuant to California Government Code Section 11346.45, California Insurance Commissioner John Garamendi will hold prenotice public discussions to gather information concerning the adoption of a proposed amendment to the California Code of Regulations Title 10, Chapter 5. The Commissioner is considering promulgating a new section (or sections) which would apply to group disability income insurance products. The regulation(s) would require insurers to disclose to policyholders and certificate holders that offsets may reduce the amount of benefits payable to a certificate holder under the policy. The new regulation(s) would require insurers that issue or deliver group disability income insurance policies in California to disclose the effect of offsets on the maximum benefit amount in a manner that is readily noticed and understood by the consumer. This disclosure would have to be given the same prominence as statements setting forth the maximum benefit amount payable under the policy. The Commissioner also invites comments on whether the regulations should prohibit insurers from offsetting estimated amounts, including estimated retirement benefits (Social Security normal retirement age benefits, public and private disability retirement benefits, and PERS and private normal retirement age benefits), estimated disability earnings (earnings received for work performed while disabled), and estimated worker's compensation permanent disability benefits, on the grounds that such estimates are unnecessary and/or too speculative.

California Insurance Code section 790.03(a) states in part that "[m]aking, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby...." is an unfair method of competition and unfair or deceptive act or practice. California Insurance Code section 790.03(b) states in part that "[m]aking or disseminating or causing to be made or disseminated before the public in this state...any statement containing any assertion, representation or statement with

respect to the business of insurance ...which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading" is an unfair method of competition and unfair and deceptive act or practice.

Benefits paid under some group disability income insurance policies are subject to offsets. These offsets can reduce the amount of benefits actually paid under the policy to a minimum amount, or, in some cases, even to zero. It appears that there is inadequate disclosure of this possibility to policyholders and certificate holders when coverage is purchased. It appears that the policies, certificates of coverage, and sales materials emphasize the maximum benefit payable under such policies. If they do not also disclose the effect of offsets on the maximum benefit amount in a manner that is readily noticed and understood by the consumer, the disclosure is deceptive, misleading, and a misrepresentation of the terms of the policy and the benefits and advantages promised.

The new regulation(s) would be added to existing regulations based on the authority set forth in Insurance Code section 790.10 and the reference set forth in Insurance Code section 790.03 subsections (a) and (b)

You are hereby invited to participate in these informational prenotice public discussions. The purpose of these discussions is to gather information and to provide certain interested and affected persons with an opportunity to present statements or comments to the Commissioner concerning the adoption of the regulation(s) described above. The Commissioner also seeks information from any interested or affected party on the impact that offsets have on policyholders and certificate holders.

Public discussions will be held on the following date, at the times and location specified below:

Date: Monday, October 30, 2006

Location: State of California  
Department of Insurance  
22<sup>nd</sup> Floor Hearing Room  
45 Fremont Street  
San Francisco, CA 94105

Time: 10:00 a.m. to 5:00 p.m. (concluding earlier if the participants in attendance have completed their comments)

October 10, 2006

Page 3

The facility to be used for these public discussions is accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the undersigned by October 25, 2006 in order to make special arrangements.

Space is limited so we are asking that you limit your representation to one individual.

Participants should be prepared to present specific comments on, and/or regulation language for, the regulation(s) under consideration at the scheduled public discussion.

All persons are invited to submit written statements.

Please be advised that participation in these prenotice discussions will be in addition to, and not in substitution for, any participation in a formal rulemaking process. This invitation to prenotice public discussions does not constitute a Notice of Proposed Action under the Administrative Procedure Act. Consequently, comments (oral or written) received in connection with these prenotice discussions will not be included in a rulemaking file, which will not be opened until the time a formal notice is issued. Similarly, the Department of Insurance is not required to respond to comments received before that time. For this reason, if a rulemaking file is subsequently opened and you wish to have comments included in the rulemaking file or to require the Department to respond to comments as part of the process by which it adopts a proposed regulation, you must present your comments during the formal public comment period according to the procedures outlined in the Notice of Proposed Action at the time that document is issued, regardless of whether the comments have been made in connection with these prenotice public discussions. The Commissioner nonetheless welcomes your participation in these discussions, and welcomes the opportunity to consider all of the information provided.

All inquiries regarding the proposed regulation under consideration and the prenotice public discussion should be directed to the undersigned.

The Department asks participants to RSVP by October 26, 2006.

---

Nancy N. Hom  
Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Phone: (415) 538-4144  
Fax: (415) 904-5729  
**E-mail: [homn@insurance.ca.gov](mailto:homn@insurance.ca.gov)**